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SUGGESTIONS AS TO THE MODE OF AUTHENTICATING THE JUDGMENTS OF JUSTICES OF THE PEACE OF ONE STATE, SOUGHT TO BE MADE EVIDENCE IN ANOTHER.

In what manner the judicial proceedings of the justices of the peace of one State, should be authenticated so as to be evidence in another, is a question not thoroughly settled, although the subject of much discussion.

In the following pages we propose to consider the most important decisions on this question, and suggest what seems to be the only proper modes by which judgments of justices of the peace should be authenticated, to be admissible as evidence in the courts of any State of the Union.

And in treating of the mode of authenticating such judgments, we will first consider, whether they come within the provisions of the acts of Congress of May 26, 1790, ch. 11, or of March 27, 1804, ch. 56.

These acts are the result of the power conferred on Congress by the first section of the fourth article of the constitution. This section provides, that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws, prescribe

the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

What may be the effect of the first clause of this section, whether it is requisite that the mode of proof prescribed by Congress should be conformed to, otherwise the full faith and credit declared by the constitution cannot be extended to such records and judicial proceedings as are not so proved, is not here a question. We have only to do with the second part of the section; "and the Congress may by general laws, prescribe the manner in which such acts, records and proceedings shall be proved."

Congress, by the act of May 26, 1790, has exercised the power thus conferred upon it. This act provides, "that the records and judicial proceedings of the courts of any State shall be proved or admitted in any court within the United States, by the attestation of the clerk and seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form." And the act concludes with declaring what faith and credit these records and proceedings thus proved, shall have within the United States.

In further fulfilment of the provisions of the constitution, Congress, by the act of March 27, 1804, provides a mode for proving the public books of the States and Territories, "not appertaining to a court," and extends the provisions of the act of 1790 to the records and judicial proceedings of the territorial courts.

But much doubt has been entertained, whether there is not another class of documents, for which Congress has not yet provided, namely, the records, so called, and judicial proceedings of justices of the peace.

It is evident that the act of 1804 does not apply to the documents in question, for the words of the act are: "all records and exemplifications of office books, which are, or may be, kept in any public office of any State, not appertaining to a court." And it has been decided, that this act applies only "to public writings recognized by common law as invested with an official character, and, therefore, susceptible of proof by secondary means, but which are not

of the nature of judicial records or judgments." *Snyder* vs. *Wise*, 10 Barr's (Pa.) R. 157; *Lawrence* vs. *Gaultney*, Cheves' L. & E. R. 7; *Gay* vs. *Lloyd*, 1 Greene's (Iowa) R. 78.

And, therefore, it is held, that the judgments of justices of the peace are not within the purview of this act of Congress. But whether they come within the provisions and intent of the act of May 26, 1790, is a mooted question.

In order, by the most liberal construction, to bring within this latter act "the records and judicial proceedings" of every court of justice, and thus fulfil what would seem to be the intention of the clause of the constitution above quoted, the courts of several of the States have decided, that if the justice is bound by the law of his State to keep a record, technically so called, of his proceedings, they are within the meaning of the act of 1790, and may be certified according to its provisions.

In Connecticut, in the case of *Bissell* vs. *Edwards*, 5 Day's R. 363, the decision of the court concludes thus: "When courts of justices of the peace are courts of record, they come within the act of Congress. In those States where justices of the peace hold courts of record, where they are the sole judges, and have no other persons to be their clerks, they are the presiding magistrates and clerks of their own courts, and may certify their records in a manner conformable to the act of Congress. After attestation of the record, a justice of the peace may certify that he is the presiding magistrate and clerk of the court, that there is no seal, and that the attestation is in the usual form, and then subscribe it as justice of the peace. This would be a literal compliance with the act, and the copy of the record so certified, would be admissible evidence."

In the Vermont reports there are three cases confirmatory of the above decision. The first is the case of *Starkweather* vs. *Loomis*, 2 Verm. R. 573, in which the judge, in addition to what was decided in Connecticut, said, "that the justice not having an appropriate seal, might use a common one." The case of *Blodget* vs. *Jordan*, 6 Verm. R. 580, confirms the decision in 2 Verm. R. There is also a *dictum* in the case of *Brown* vs. *Edson*, 23 Verm. R. 447, with respect to a decision in 1 D. Chip. R. 59—the case of *Ingersoll* vs.

Van Gilder, decided in Vermont in 1797, and probably the earliest decision on the question after the passage of the act of 1790. The *dictum* in 23 Verm. R. is: "That the case of *Ingersoll* v. *Van Gilder*, where it is said that a judgment of a justice of the peace in another State, cannot be authenticated in the mode prescribed by the act of Congress, has not been regarded as law for many years. A justice must certify his record, and then certify that he has no seal or clerk, but acts as clerk of his own court, and that the aforegoing attestation is in due form; and such record is as conclusive, to all intents, as the record of the highest court in the State."

There is a direct decision in 3 Munroe's (Ky.) R. 62, *Scott* vs. *Cleveland*. In conclusion, the judge said, "that the record of the justice was a judicial proceeding of a functionary of a sister State, and was authenticated as the act of Congress requires, and as such no objection exists to its admission."

There are also *dicta* approving the aforegoing decisions in 8 Porter's (Ala.) R. 306, *Dozier* vs. *Joyce;* in 2 Ala. R. 310, *Huff* vs. *Cox;* and in 23 Miss. R. 505, *Stewart* vs. *Swantzy*.

But the weight of opinion is, that the courts of justices of the peace, in most of the United States, are not courts of record. And this opinion is predicated upon the supposition that the organization and jurisdiction of those courts, although by statute in all the States, are the same, or very similar in every State of the Union. And the remarks which we are about to make on the nature of courts of record, with reference to the question whether the courts of justices of the peace come within that rank of courts, are made under the above supposition. What are their organization and powers, generally, it is unnecessary for us to say, as they are known to all.

But if either by statute or decision of any State it is determined that its justices of the peace hold courts of record, yet, as they are courts of inferior jurisdiction, and derive their authority wholly from statute, the statutes creating and organizing them must be shown in every instance, and so any peculiarity of the local law, whether by statute or decision, as above mentioned, must be shown to exist. It will never be presumed. See 10 Barr's R. 157; 3 Wend. 267.

In the common law, the great division of all courts is into courts of record, and courts not of record. And all courts of record are the king's courts. All courts, not the king's courts, are courts not of record; and these last are either what, in the common law, are called private courts, or courts of more general jurisdiction, but which do not proceed according to the course of the common law.

In Co. Litt. 260, a, and in Bacon's Abridg. "Courts," D. 2, we find that, in the general division of courts of record, or the king's courts, as flowing from him as the fountain of justice, are placed all courts exercising common law jurisdiction, and which are of a public nature, and that in the lowest rank of those enumerated in Bacon's Abridg. as courts of record, are placed justices of the peace. Also in 4 Inst. 177, and 3 Burn's Justice, 3, justices of the peace are called "judges of record.' The lowest court of the kingdom, the court of *Piepoudre*, is a court of record, 3 Bl. Com. 32; and so also is the court of censores of the College of Physicians in London, Salk. 200; and also the court of the Commissioners of Sewers, Siderf. 145. And the reason those tribunals, although of less importance than many courts considered not of record, are held to be courts of record, seems to be simply that they come under the division of courts, called the king's courts, as being derived especially from him.

The power to fine and imprison has been regarded as the determining mark of a court of record. "All courts of record being the king's courts, therefore, no other court hath authority to fine or imprison, and the very erection of a new jurisdiction with power of fine or imprisonment, makes it instantly a court of record." 3 Bl. Com. 25. But this power to fine and imprison has been held to be incident to all courts, whether of record or not of record, so far as it regards *contempts* committed in the face of the court. 1 Wooddesson's Lect. 60; Bacon's Abridg. Courts, E; 1 Bre. (Ill.) R. 266. And as there are some courts of record, which only have this limited power in fining and imprisoning, such as the court of *Piepoudre*, Court of Commissioners of Sewers, and justices of the peace, &c., (See Bl. Com. *passim*,) it would seem to follow, taking the power to fine and imprison to mean, the punishment, by such

means, of crimes and misdemeanors committed against the peace of the king, that it can hardly be taken as the determining characteristic of, nor inseparably incident to, a court of record. It is held, that in the early times of the feudal law, the private or baronial courts, never exercised any criminal jurisdiction, although they had exclusive jurisdiction over their vassals as to all civil matters. The king, or chief of the country, recognized no distinction between his follower and his subject, as to crime—both were equally under the power of the sword. Walker's Theo. of the Com. Law, 83. By degrees the king's courts acquired civil jurisdiction, and that of the baronial courts was much decreased in extent, or became concurrent with that of the king's courts. And so it happens that some of the king's courts, although courts of record, have not the power over criminal matters, as they were formed from the jurisdiction taken from the king's feudatories; while some, as the king's bench, sheriff's town, the courts lect, &c., (See 4 Bl. Com. 265,) being the original courts of the king, or chief, have all the criminal jurisdiction, and would seem to have given occasion to the power of fine and imprisonment, being considered the inseparable incident of the king's courts, as it certainly was in the early times.

But this is a question which we must leave to the legal antiquary to determine, as we have not sufficient space, nor would it be doing justice to the other parts of our subject, to consider it more fully.

"A court not of record is the court of a private man, whom the law will not entrust with any discretionary power over the fortunes, or liberty, of his fellow-subjects. Such are the courts baron, incident to every manor, the courts hundred, the county courts, and such like." Co. Litt. 117 b; 3 Bl. Com. 25; 1 Burn's J. 421. Also, at common law, the equity, admiralty, military, and ecclesiastical courts, are not courts of record, but derive their authority from the crown, but not as the fountain of justice, technically so called. 3 Bl. Com. 68; Bac. Abridg. "Courts," D. 2. For as all courts of record are, at common law, derived from the king as the fountain of justice, it is held, that the stream from that fountain must flow according to the course of the common law, and, therefore, that the above mentioned courts, though of a general jurisdiction and not of

a private nature, as the courts baron, &c., cannot be considered courts of record, as they proceed according to rules of law different in many respects, from the general law of the land. Co. Litt. 260 C.; 1 Wooddesson's Lect. 59.

Let us consider, now, the application of these common law principles to this country. It is certain that no distinction, equivalent to that mentioned above, of public or king's courts, and private, or not the king's courts, has ever existed in the United States. In Maryland, under the Lords Proprietary, the baronial courts did exist, but seem to have become obsolete before the revolution. All courts, in this country, are public courts. None of the courts in the United States are by prescription; but all are created by constitutions or statutes of the United States, or of the several States, by which their powers and jurisdictions are generally defined; but pleas and proceedings in them are partly by these constitutions and statutes, and partly by the common law, and the customs brought from England. 6 Dane's Abridg. Am. Law, ch. 187, art. 1. From the above fact, it follows that, in this country, the distinction upon which courts of record, and those not of record, is based in England, cannot exist. And a bare consideration of the nature of those courts in this country, which are regarded as courts not of record in England, would corroborate the above position. The courts of admiralty and equitable jurisdiction, the county courts, and probate courts, are certainly here generally regarded as courts of record.

In the United States we have not adopted all the strict distinctions of the common law of England, but have modified it to suit our differently based institutions, in this as in many other of its doctrines.

Lord Coke, in 1 Inst. 260 a, says: Record is a memorial of remembrance in rolls of parchment, of the proceedings and acts of a court of justice, which hath power to hold a plea according to the course of the common law, of real or mixed actions, or of actions *quare vi et armis*, or of personal actions, whereof the debt or damage amounts to 40*s.*, or above, which we call *courts of record*, and are created by Parliament, letters patent, or prescription. But legally, records are restrained to the rolls of such only as are courts

of record, and not the rolls of inferior, nor of any courts which proceed not *secundum legem et consuetudinem Angliae*. Co. Litt. 260 a.

With the modifications before suggested as necessarily arising from the nature of our judicial systems in the United States, we adopt this extract from Coke, as defining the idea of courts of record generally entertained in this country. And the general opinion would seem to be that a court of record in this country, is a court which possesses jurisdiction equivalent in importance to that mentioned by Coke, but which does not *ex vi termini*, "hold plea according to the course of the common law;" which must, in order to be entitled to the rank of a court of record, engross on "rolls of parchment," or in a manner equivalent, its proceedings, which office must be performed by a clerk, prothonotary or register, &c., in whose custody must also be deposited the records, as thus made, of the court. And a clerk would seem to be a constituent part of a court of record, also, in England, for there, even justices of the peace have their clerks. 1 Burn's J. 347. The other constituent part of a court of record in this country, seems to be a public and official seal, whereby the court may prove itself. 3 Bouvier's Inst. of Am. Law, 68; Walker's Am. Law, 341, 557. To a court of record, both in this country and in England, is also incident a writ of error. 5 Dane's Abridg. Am. Law, ch. 137, art. 3. From what has been before said, the power to fine and imprison would hardly *per se* seem to be the determining characteristic of a court of record.

If what we have above stated be law, then it follows, that courts of justices of the peace, as they are organized in most of the States, cannot be regarded as courts of record in this country. See Cowen & Hill's notes to Phil. on Evidence, part 2, p. 308, &c.

We come now to the consideration of the subject of this article, under the presumption that justices of the peace do not generally, in the United States, hold courts of record; that they keep no record, strictly so called, of their proceedings, but only "dockets;" that they have no clerks, nor official seals by which they may prove themselves; that they have only limited and inferior jurisdiction,

conferred by statute; and that, finally, from the above circumstances, the knowledge of their official existence is necessarily confined, not merely to the State, but to the county of their residence. And in this wise have the most weighty decisions in the country regarded them.

"We think the judicial proceedings referred to in the constitution," says C. J. Parker, in the case of *Warren* vs. *Flagg*, 2 Pick. R. 448, quoted in part in 1 Greenl. Evid., sect. 505, "were supposed by the Congress which passed the act providing the manner of authenticating records, to have related to the proceedings of courts of general jurisdiction, and not those which are merely of municipal authority; for it is required that the copy of the record shall be certified by the clerk of the court, and that there shall also be a certificate of the judge, chief justice, or presiding magistrate, that the attestation of the clerk is in due form. This, it is said, is founded on the supposition that the court, whose proceedings are to be thus authenticated, is so constituted as to admit of such officers; the law having wisely left the records of magistrates, who may be vested with limited judicial authority, varying in its objects and extent in every State, to be governed by the laws of the State, into which they may be introduced for the purpose of being carried into effect. Being left unprovided for by the constitution or laws of the United States, they stand upon no better footing than foreign judgments."

In New Hampshire, the decision in Massachusetts is confirmed by the cases of *Robinson* vs. *Prescott*, 4 N. H. R. 450, and of *Manhurin* vs. *Bickford*, 6 id. 567.

In New York the same doctrine is held; and further, that the statute conferring jurisdiction on the justice, must be shown, in addition to the ordinary proof of his proceedings. *Thomas* vs. *Robinson*, 3 Wend. R., 267; *Seldon* vs. *Hopkins*, 7 id. 435.

In Ohio, in the cases of *Kuhn* vs. *Miller*, Wright's (Ohio) R. 127, and of *Silver Lake Bank* vs. *Harding*, 5 Ohio R. 543, it is said, that it has been uniformly decided in Ohio, that the mode of certifying justices' judgments is not prescribed by the act of Congress; for if he were within the act of Congress, as he is both clerk and

judge, and has no public seal, we would be obliged to receive a transcript from a docket as evidence, without other proof of his being a justice, and the transcript being correct, than his own signature and his private seal; but the courts of Ohio have invariably required other evidence of the person who certifies the transcript being a justice, than his own certificate, usually the certificate of the clerk of the county court, and the seal of the court.

In Iowa, in the case of *Gay* vs. *Lloyd*, 1 Greene's (Iowa) R. 78, the same doctrine is recognized. It also seems, from the case of *Trader* vs. *McKee*, 1 Scam. R. 538, to be the settled opinion in Illinois. In Pennsylvania, in the case of *Kean* vs. *Rice*, 12 Serg. & Rawle's R. 203, it is said, that if the court whose doings are sought to be proved, is so constituted that it cannot comply with the requisitions of the act of Congress, for lack of a clerk, or other requisite, its proceedings cannot be authenticated in this mode; and hence may be proved as if such court were strictly foreign. See also, *Baker* vs. *Field*, 2 Yeates' (Pa.) R. 532.[1]

This question was fully discussed in Pennsylvania, in *Snyder* vs. *Wise*, 10 Barr's (Pa.) R. 157, and the opinions of the courts of Massachusetts, New Hampshire, &c., approved as the soundest view of the question. The court further says: "that its researches have not led it to a knowledge of any case by which it has been determined that the judgment of a foreign justice of the peace may be proved by the statutory certificates; for what has fallen from the Connecticut and Vermont courts upon the subject are but *dicta* predicated upon a supposed peculiarity of the local law, which, however, must be shown to exist. It will not be presumed."

In South Carolina, in the case of *Lawrence* vs. *Gaultney*, Cheves' L. and E. R. 7, it is held, that the acts of Congress do not apply to the judgments of justices of the peace, and, as is held in all the above quoted cases, we must find, either in the common law, or in a statute of the State into which these judgments may be introduced for the purpose of being carried into effect, the mode in which their admissibility as evidence may be established.

From the cases above cited, it is evident that the weight of opinion

[1] See Com. v. Hinchman, 3 Casey, 479; 5 Am. Law Reg. 424, S. C.

is, that if the justice's court is not a court of record, it is not within the provisions of the act of 1790, and that whether a court of record, or not of record, it is not within the meaning of the act of 1804.

But whether, it being a court of record, as in some States it is decided and enacted it is, it must, therefore, come within the provisions of the act of 1790, is still an unsettled point.

Among the cases above cited, deciding that judgments of justices are not within the acts of Congress, the only ones which notice at all the distinction between justices' courts of record and not of record, are the cases in 10 Barr, 3 Wend. and 5 Ohio; and they decide that a justice's court will never be presumed to be of record, but that it must be shown and proved.

The other cases all decide this question of the impracticability of proving justices' judicial proceedings by the statutory certificates, upon the ground that a justice's court is one of inferior and limited jurisdiction and of mere municipal authority, that it is generally deficient in the requisites mentioned in the act, and that finally, under the rules of evidence existing between the several States of the Union, the justice is not able to prove his own official existence, having no official seal for that purpose.

There is one species of courts—courts of probate—in some States, resembling justices' courts, and whose records, it seems to be settled, may be proved according to the act of Congress of 1790, although the court may unite in itself the offices of both judge and clerk. But this court is somewhat different from a justice's court, it having a clerk, or register, distinct, in the eye of the law, from the judge, though sometimes in the same person, while the duty performed as a clerk, by a justice, is rather an incident to his office, than a constituent part of the court. Moreover, most, if not all, probate courts, have official seals, and are, besides, courts of more general jurisdiction than courts of justices of the peace. See 1 Greenl. Evid., sects 503, 505, and cases there cited, and especially the case of *Ohio ex rel. Hinchman* vs. *Hinchman*, recently decided in Pennsylvania, and reported in 27 Pa. (3 Casey) State R. 479. See, also, *Catlin* vs. *Underhill*, 4 McLean's U. S. C. C. R. 199.

It is evident, from the nature of our confederacy, presuming that the judgments of justices of the peace are not provided for by congressional legislation, under the constitutional provision, that they must be regarded, at least so far as their mode of proof is concerned, as foreign judgments. 6 New Hamp. R. 567; 6 Pick. R. 238.

It is a settled principle of law, that the *lex fori* must always be conformed to in every thing relating to the remedy sought. Therefore, the law of the State into which the judgment of a justice of the peace may be introduced, for the purpose of being carried into effect, or made evidence, must govern, as to its authentication, independent of congressional legislation. This law is either the common law, or some statute of the State, fixing in definite form, the mode of authentication required in such State.

The different modes of authenticating foreign judgments, at common law, have been laid down by Marshall, C. J., as follows:— 1. By an exemplification under the great seal. 2. By a copy proved to be a true copy. 3. By the certificate of an officer authorized by law, which certificate must itself be properly authenticated. These he pronounces the usual, if not the only modes of verifying foreign judgments. *Church* vs. *Hubbard*, 2 Cranch's R. 237. See, also, 6 N. H. R. 567; 10 Barr's R. 157. We will now apply these modes, *mutatis mutandis*, to justices' judgments.

In some of the States, the judgments of their own justices of the peace are admissible in evidence, in any other courts of the same State, only upon the production of the docket containing the judgment sought to be made evidence, the handwriting of which docket must be proved to be that of the justice to whom it is presumed to belong, or, if the original docket cannot be produced, a *sworn* copy from such docket will be admitted. In other States, a copy from his docket, certified by the justice to be a true copy, &c., and attested by him, is deemed sufficient evidence, upon the principle that a copy given by a public officer, whose duty it is to keep the original, ought to be received in evidence. 1 Greenl. Evid., sect. 485. For decisions on this subject, in different States, see Cowen & Hill's notes, part 2, p. 300, &c., to Phil. on Evid.

If a justice's transcript is to be used in another county from that

in which he resides, then it is a general custom, we believe, in all the States, to verify the justice's official character by the certificate, under the seal of the clerk of the court of the county in which such justice resides.

If transcripts of justices' proceedings of the State in which it is sought to enforce or make evidence the judgment of a justice of another State, are admissible upon a certificate from the justices, or if only their being sworn to, will render them admissible, then such rule should be observed by the justice of the other State. But, in some cases, it is impossible to become acquainted with the law on this subject, in some particular State in which it is sought to produce in evidence a foreign justice's judgment. In such cases, if the following rule of law be observed, even an ignorance of the form required by statute, in such State, probably will not prejudice.

The rule of law is, that, in all cases, the highest evidence must be given of which the nature of the thing is capable. It is decided by C. J. Marshall, in the case in 2 Cranch's R., that in general, foreign laws and judgments are required to be verified by the sanction of an *oath*, unless they can be verified by some other such high authority, that the law respects not less than the oath of an individual. See, also, 1 Starkie's Evid. 155; 5 East's R. 473; 17 Mass. R. 543; 24 Verm. R. 501. And in none of the States can any higher evidence of the correctness of a justice's judgment be required, than a *sworn* copy from his docket.

The copy from the justice's docket must be proved by one who swears that he has compared it with the original, taken from the proper place of deposite. 1 Starkie's Evid. 158. Such affidavit should be made, we presume, in the same manner, and before the same person, as is an ordinary affidavit, to be used out of the State. *Church* vs. *Hubbard*, 2 Cranch's R. 238.

It is a presumption of law, that when a transcript from a justice's docket is given in this way, that the docket still remains before him and is in his possession, (12 Serg. & Rawle's R. 72); for it has been decided that if the docket of a justice has been returned to the court of the county in which he resides, and in which, in most, if not all, of the States, the dockets of magistrates going out of office,

&c., are deposited, it then becomes a record of such court, and may be certified under the act of 1790. *Manhurin* vs. *Bickford*, 6 N. H. R. 567.

We have now a copy from the justice's docket, proved in a manner which would seem to be unimpeachable. But it is also necessary that the person whose name appears in the copy, as a justice of the peace, should be proved to be so, and to be the justice before whom were had the proceedings of which a transcript from his docket is given.

Being unable to prove his own official existence, it must be shown by extraneous means. And for this purpose the following modes are suggested: 1. The highest evidence of any fact is an exemplification under the great seal. In this manner, it is suggested, the official character of the justice of the peace may be proved. A certificate, under the great seal of the State, may be attached to the sworn copy, from the Governor, Secretary of State, Chancellor, or whoever keeps the great seal, certifying the official character of the justice at the time of rendering the judgment, and that he is still a justice of the peace, &c., that he had jurisdiction in this cause, and that full faith and credit should be given to his official acts, &c. *Ex parte*, Povall, 3 Leigh's R. 816; 2 Bibb's (Ky.) R. 334; *Higgins* vs. *Squiris*.

This document, under the great seal, must be received every where, both in this country and abroad, among civilized nations, as the highest evidence known to the law of nations.

This is one, and we think an unimpeachable mode of verifying a justice's judicial proceedings, and his official position.

2. Another mode of proving a justice's official character, is a certificate, under seal, of the clerk or prothonotary of the court of the county in which the justice resides, specifying the same facts as are above mentioned in the certificate under the great seal. The clerk and his certificate, and the seal thereto affixed, should then be verified by the chief or presiding judge of the same court, and then the clerk should certify to the official position of the judge, &c.

But this mode of certifying the justice's official character, although evidently more convenient than the first, being a mode of proof not

sanctioned as the first is, by the common law, the existence of the State constitutional provision or State law giving such court jurisdiction over justices of the peace of its county, it is held, must be shown and proven; for it has often been decided, that the courts of one State, or country, are not bound, *ex officio*, to notice the local regulations of another. See Cowen & Hill's notes, part 2, p. 326, &c., to Phil. on Evidence.

This was the ground upon which the judgments of certain justices of the peace, whose official characters were certified to in the way above mentioned, but in which cases, however, the transcripts were not sworn to by any witnesses, but only certified by the justices, were refused to be admitted as evidence in Illinois. *Trader* vs. *McKee*, 1 Scam. R. 558; and in South Carolina. *Lawrence* vs. *Gaultney*, Cheves' L. & E. R. 7; and also in Iowa, *Gay* vs. *Lloyd*, 1 Greene's (Iowa) R. 78. See, also, 10 Barr's R. 157. But, in 1 Wright's (Ohio) R. 127, and 3 Ohio R. 545, before quoted from, the decision of the court in both cases was, that the prothonotary's or clerk's certificate has long been received in Ohio as evidence of the official character of a justice of the peace, of another State. See, also, *Morrison* vs. *Hinton*, 4 Scam. R. 457.

Moreover, it was held, in the case of *Ripple* vs. *Ripple*, 1 Rawle's (Pa.) R. 386, that the laws of a sister State were to be proved, as the laws of a foreign country, but that the acts of its courts might undoubtedly be resorted to for their exposition.

And in accordance with the mode last suggested, are such State statutes as we have seen.

The statutes of New York, (see L. N. Y., of 1836, p. 658, sess. 50, chap. 438, sects. 1, 2, 3;) of Iowa, (see Rev. Stat., sect. 19, 329,) and of Wisconsin, (see Stat. of Wisc. 320,) provide that a justice's judgment, of another State, is to be proved by a certificate of the justice, that the transcript is in all respects correct, (and, in New York, "that the said justice had jurisdiction of said cause"); and also a further certificate of the clerk or prothonotary of the county, or of the court of the county, in the mode before suggested.

There is also a similar statute in Pennsylvania, but which differs

from the statutes of the above States in this particular: instead of giving a certificate, the justice is required to make affidavit. And the cause of this provision seems to be, that in Pennsylvania a sworn copy from a justice's docket is alone evidence. 10 Barr's (Pa.) R. 157. This statute of Pennsylvania is the act of February 27, 1845. See Purdon's Digest, p. 482.

The statutes of New York and of Pennsylvania both provide only for "adjoining States." See the statutes, for other provisions.

But as the mode of proving the justice's official character, by the county clerk's certificate, is not admissible generally in the States, unless the law of the State, by which the clerk or prothonotary acts, be produced; and as it must be difficult, if not impossible, at all times to prove such law, therefore, it is safer to adopt the mode of proof under the great seal of State, first suggested.

If there is even a statute similar to the one above mentioned, but such statute is unknown, still the mode of proof by the *sworn* copy, and the certificate under the great seal, would probably be good, for it is the highest evidence, and must be received in every court of justice of every State or country.

The only case in which we have found any definite mode of proving the judicial documents under discussion, laid down, is the case, before quoted from, of *Lawrence* vs. *Gaultney*, Cheves' L. & E. R. 7. At the risk of repetition, and as it suggests modes of proof we have not mentioned, we will give some extracts from the opinion of the Court of Appeals. The evidence which was produced to sustain the action in the court below, "consisted of the two *original* judgments and executions, with a certificate of the clerk of the county court in North Carolina, that the persons whose names were signed to the judgments were magistrates, and that their signatures were genuine, and the certificate of the presiding magistrate of the county court, that the person certifying was clerk." The court below, upon the ground of insufficiency of evidence, ordered a non-suit, and upon the appeal the decision of the Court of Appeals contains the following: "If neither Congress nor the State Legislature has prescribed any mode for proving such judgments, (and the acts of Congress of 1790 and 1804 do not apply to this

case,) then we must find in the common law, the rules by which they are to be established. The fundamental rules of evidence are, that the best shall always be produced, and that every fact shall be proved by the oaths of witnesses, unless the law has prescribed some other mode. The plaintiff had to show: 1st. That a justice had jurisdiction of his case by the law of North Carolina; 2d. That the person who decided it, was a justice; and 3d. That he did in fact render the judgment alleged."

"The certificates of the clerk and presiding magistrate of the county were not under oath; nor are they by any enactment made authentic in proceedings of this character. The law of North Carolina, by which the justices had jurisdiction of this case, might have been proved under the provisions of the act of 1790, or according to our precedents, by the production of the printed laws of that State. In the same manner it might be shown that the person who signed the judgment was a justice, if his appointment had been made by the Legislature. If the appointment was by the governor, or by any other authority, then an exemplification of the office books, certified according to the act of Congress of 1804, would have proved it." M.

RECENT AMERICAN DECISIONS.

In the Supreme Court of Iowa, June, 1856.

M'MANUS *vs.* CARMICHAEL.[1]

1. Although the ebb and flow of the tide was, at common law, the most usual test of navigability, it was not necessarily the only one.
2. But however this may be, that test is not applicable to the Mississipi river.
3. The common law consequences of navigability, attach to the legal navigability of the Mississipi.

[1] From 2 Clarke's Cases in Law and Equity, determined in the Supreme Court of the State of Iowa. We are indebted to the learned State Reporter for this case; and regret that its very great length compels us to present only the head note and some of the more important parts of the opinion. The whole case is an elaborate discussion of an important branch of law, and the arguments of counsel and opinion of the court equally merit careful study.—*Eds. Am. L. Reg.*